

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RENEE D. TRICE and U.S. POSTAL SERVICE,
KENSINGTON POST OFFICE, Kensington, MD

*Docket No. 00-1303; Oral Argument Held July 12, 2001;
Issued August 21, 2001*

Appearances: *Renee D. Trice, pro se; Thomas G. Giblin, Esq.*, for the Director, Office of
Workers' Compensation Programs.

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty.

On March 19, 1999 appellant, then a 33-year-old modified carrier, filed a traumatic injury claim assigned number A25-539721 alleging that she continued to be harassed at work on March 13, 1999. She stopped work on March 22, 1999.¹ Will Adkins, appellant's union representative, indicated on the claim form that he witnessed a verbal aggression by Leonard Fairfax, an employing establishment postmaster, towards appellant and that this was one of numerous aggressions by Mr. Fairfax. Mr. Adkins stated that appellant explained to him that she could not continue to work under these conditions.

Appellant's claim was accompanied by letters dated April 6, 1999 from the employing establishment controverting appellant's claim. An April 1, 1999 disability certificate from Dr. Jemima A. Kankam, a psychiatrist, indicating that appellant was excused from her duties also accompanied appellant's claim. A March 22, 1999 letter from Sandra L. Barrett, an employee assistance program licensed social worker, revealed that appellant was seen by her on March 18, 1999 due to stress and anxiety, a recommendation that appellant see a psychiatrist, appellant's symptoms and opinion that appellant would not be able to function at the level that she was accustomed to with only psychotherapy.

¹ Prior to the instant claim, the Office of Workers' Compensation Programs accepted appellant's claim assigned number A25-316677 for derangement of the left knee.

In an April 19, 1999 letter, the Office advised appellant to submit additional factual and medical evidence supportive of her claim. In response, appellant submitted an April 22, 1999 memorandum from Linda Vaughn, an employee assistance program licensed social worker, providing that appellant called the employee hotline on March 13, 1999 in distress and that she returned appellant's call referring her to an employee assistance program counselor. Appellant also submitted Dr. Kankam's April 15, 1999 disability certificate diagnosing mood disorder and bipolar disorder and his April 19, 1999 disability certificate indicating that she was excused from her duties. His May 17, 1999 report provided appellant's blood test results and a diagnosis of bipolar disorder. Dr. Kankam opined that although it appeared appellant had an underlying disorder, her mood may have been precipitated by job pressure. He further opined that this acute manic episode was aggravating a preexisting illness. In a May 18, 1999 narrative statement, appellant provided that on March 12, 1999 she gave Mr. Fairfax a letter requesting a handicap parking space for a previous employment-related disability. She further stated that on March 13, 1999 she was called into the postmaster's office five minutes after she arrived at work and she was given a letter of suspension for tardiness and her absence due to a left knee injury. Appellant alleged that about one-half an hour later, Mr. Fairfax started to harass her about providing information on a duty status report (Form CA-17) that was already established before she was rehired at the employing establishment in November 1997. She further alleged that Mr. Fairfax continued to attack her with harsh statements pertaining to her work and tried to instill fear in her with threats of losing her job if she did not comply with his orders. Appellant stated that this continued for 10 minutes or so. She indicated the physical effects of Mr. Fairfax's treatment and stated that she left the premises. Appellant explained why she delayed seeking medical treatment.

By decision dated June 15, 1999, the Office found the evidence of record insufficient to establish that appellant sustained an emotional condition in the performance of duty. In a June 25, 1999 letter, she requested an oral hearing.

At the hearing, appellant testified that she was required to work outside her physical restrictions by Mr. Fairfax. She reiterated her allegations of harassment by Mr. Fairfax in the form of letters of warning and suspension and a request to provide information on a Form CA-17 that she had already provided to the employing establishment. Appellant testified that she was harassed by the employing establishment when she received letters requesting additional documentation regarding her disability while she was at home on disability and that she was threatened with being put on absent-without-leave status if she failed to provide the requested documentation.

Mr. Adkins testified that the harassment of appellant began when Mr. Fairfax requested appellant to submit medical documentation that had already been provided. Mr. Adkins further testified that Mr. Fairfax told him to "watch this" and then Mr. Fairfax went over to appellant's workstation. Mr. Adkins stated that he did not hear what Mr. Fairfax said to appellant, but that he heard appellant say leave me alone and that she got up from her workstation in tears. He stated that appellant was then unable to continue to work. Regarding March 13, 1999 Mr. Adkins stated that Mr. Fairfax went to appellant's workstation and said something verbally aggressive to appellant, but that he did not actually hear what Mr. Fairfax said to appellant. He stated that appellant was in tears. Mr. Fairfax also stated that appellant filed a grievance with the Equal Employment Opportunity Commission (EEOC), but that it was still pending. Mr. Adkins

testified that appellant was denied handicap parking and that appellant would double park. He further testified that appellant was threatened with the towing of her truck if she did not move it. Mr. Adkins noted that, since appellant had not been working, a handicap parking space had been established.

Further, at the hearing, appellant submitted a journal reiterating her allegations of harassment. She also submitted an April 9, 1999 letter from Mr. Fairfax advising her that the documentation she submitted in support of her inability to work was insufficient and requesting her to submit additional information. Appellant's March 8, 1999 letter requested that the employing establishment provide her with documentation indicating that an employee who worked eight hours per day was not entitled to additional time for being late for work. Her March 15, 1999 letter requesting anyone who witnessed Mr. Fairfax harass her or discriminate against her to sign the letter contained several signatures. Letters dated February 12 and March 13, 1999 provided notice of appellant's suspension due to unsatisfactory attendance. Dr. Kankam's October 13, 1999 report indicated that appellant experienced stress due to harassment at work. He stated that appellant had bipolar disorder that was mixed and severe with acute exacerbation precipitated by perceived job stressors.

Subsequent to the hearing, appellant submitted changes to the hearing transcript and alleged that Mr. Fairfax required her to fill out a leave slip for one minute.

By decision dated January 13, 2000, the hearing representative affirmed the Office's June 15, 1999 decision.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage of the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.²

Perceptions and feelings alone are not compensable. Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.³ To establish her claim that she sustained an emotional or physical condition in the performance of duty, appellant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838 (1987).

compensable employment factors are causally related to the diagnosed condition.⁴ Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

In this case, appellant has primarily attributed her emotional condition to harassment by the employing establishment, specifically, a verbal assault by Mr. Fairfax, an employing establishment postmaster, on March 13, 1999. The Board has held that actions of an employee's supervisors or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. For harassment to give rise to a compensable disability there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment are not compensable. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment occurred.⁶

Although the witness statement and hearing testimony of Mr. Adkins, appellant's union representative, indicated that Mr. Fairfax verbally assaulted appellant on two occasions, which made her cry and unable to continue working, he did not actually hear what Mr. Fairfax said to appellant. In addition, appellant's March 8, 1999 letter containing signatures from several coworkers whom witnessed the harassment or discrimination appellant endured from Mr. Fairfax did not indicate specific incidents of harassment or discrimination by Mr. Fairfax that they witnessed. Appellant has not substantiated her allegation of harassment by Mr. Fairfax and thus, she has failed to establish a compensable factor of employment under the Act.

Appellant has alleged that she was required to work outside her physical restrictions by Mr. Fairfax. Work outside of physical limitations can constitute a compensable factor of employment if substantiated by the record.⁷ Appellant has failed to submit any supportive evidence establishing that she was required to work outside her physical limitations. Rather, appellant merely made a general allegation without providing specific details about the duties that she was required to perform by the employing establishment that were not within her physical limitations. This alleged compensable factor of employment, therefore, is not established as factual.

Further, appellant's allegation regarding her request for handicap parking, Mr. Fairfax's request for medical documentation and the submission of a leave slip,⁸ the warning and

⁴ *Ruby I. Fish*, 46 ECAB 276 (1994); *Mary A. Sisneros*, 46 ECAB 155 (1994).

⁵ *Id.*

⁶ *William E. Seare*, 47 ECAB 663 (1996).

⁷ *Diane C. Bernard*, 45 ECAB 223 (1993).

⁸ *Thomas D. McEuen*, 41 ECAB 389 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

suspension letters issued by the employing establishment⁹ and late arrival policy involve administrative or personnel matters, which do not constitute compensable factors of employment under the Act absent evidence of error or abuse.¹⁰ Although appellant filed a grievance with the EEOC concerning harassment by Mr. Fairfax, no decision was issued finding that the employing establishment had committed error or abuse. Appellant has not established that the employing establishment committed error or abuse in handling these matters. Therefore, she has failed to establish a compensable factor of employment under the Act.

As appellant has not established any compensable factors of her federal employment that she implicates in causing the development of her emotional condition, appellant has failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.¹¹

The January 13, 2000 and June 15, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
August 21, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁹ See *Jimmy Gilbreath*, 44 ECAB 555 (1993).

¹⁰ *Margreate Lublin*, 44 ECAB 945 (1993).

¹¹ As appellant has not submitted the necessary evidence to substantiate a compensable factor of employment, the medical evidence need not be reviewed in this case.